

**BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE**

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**In the Matter of the Appeal of Ryan T. Trapp**

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Hearing Date: January 4-5, 2016

Hearing Location: 200 East Wells Street, Room 301A, City Hall  
Milwaukee, Wisconsin

Commissioners: Fred Crouther  
Kathryn A. Hein  
Michael M. O'Hear

Hearing Examiner: Michael M. O'Hear

Appearances: Robin Pederson, Assistant City Attorney  
For the Milwaukee Fire Department

Attorney Christopher J. MacGillis  
For Appellant Ryan T. Trapp

**PROCEDURAL HISTORY**

Fire Chief Mark Rohlfing charged Firefighter Ryan T. Trapp in an order dated September 22, 2015, with violating Milwaukee Fire Department rules and regulations. The charge (Exhibit 1) cited the following rules and regulations:

- 23.2: Failure to perform duties
- 25.4: Unexcused absence from duty—two (2) hours or greater
- Core Value *Integrity*, referencing principles 3 and 6
- Core Value *Competence*, referencing principles 4-6
- Guiding Principle *Accountability*, referencing principle 1
- Tardiness Policy

(See also Amended Complaint, Ex. 27).

Trapp, the Appellant in this matter, filed an appeal with the Milwaukee Fire and Police Commission from the order of the Fire Chief and a hearing was held.

## **SUMMARY OF HEARING PROCEEDINGS**

The hearing was conducted on January 4-5, 2016. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Fire Chief: Assistant Chief Gerard Washington, Milwaukee Fire Department  
Chief Mark Rohlfing, Milwaukee Fire Department

For the Appellant: Dan DeGryse, Director of the Rosecrance-Florian Program  
Firefighter Ryan Trapp, Milwaukee Fire Department  
Captain Al Jansen, Milwaukee Fire Department  
Captain David Seager, Milwaukee Fire Department

Based upon the evidence received at the hearing, the Commission makes the following findings of fact and conclusions of law.

## **FINDINGS OF FACT**

We find the following facts have been established by a preponderance of the evidence.

1. Firefighter Ryan Trapp began working for the Milwaukee Fire Department in 2004. He was recognized by the Department for meritorious service on at least two occasions. (Exs. 35, 36) Prior to 2014, he did not receive any formal discipline for violating any Department rules or regulations.
2. In August 2013, Trapp was transferred to a new station, Engine 32. By that time, the Fire Department's senior management understood there to be "cultural" problems at Engine 32, which included inappropriate hazing of new firefighters. Management had already begun to address these problems before Trapp's arrival, and there is no allegation that Trapp participated in any of the hazing activities.
3. In September 2013, most of the personnel at Engine 32 were to be transferred to other stations. This decision was made in the hope of resolving the cultural problems. However, on their last shift together, some of the Engine 32 personnel chose to express their displeasure with the transfers by committing various acts of vandalism at the firehouse. These acts are identified in more detail in Exhibit 3.
4. In February 2014, Trapp and a number of other Department members were disciplined in connection with the vandalism at Engine 32. Trapp was suspended for 30 days without pay, with 10 days held in abeyance. (Ex. 3) The record is not clear as to Trapp's precise role in the vandalism. A Department Board of Investigation interviewed Trapp and other Department members who were present at Engine 32 on the day of the vandalism, but apparently met the Fire Department equivalent of the "Blue Wall of Silence." There seems to be no direct evidence that Trapp personally participated in the vandalism, and

Trapp himself denied doing so at the hearing in the present matter. We are not in a position to resolve the disputes regarding precisely who did what at Engine 32. We do think it important to note, however, that Trapp was given a very severe discipline and chose not to appeal it, which we find indicative of substantial culpability.

5. By 2007, Trapp was experiencing self-disclosed mental health difficulties relating to developments in his personal life. (Ex. 11) In 2008, he was diagnosed with PTSD and began taking antidepressants. (Ex. 11) He also “self-medicated” with alcohol, which eventually turned into an addiction. (Ex. 11)
6. By the fall of 2014, Trapp’s alcohol abuse was apparently manifesting through a pattern of unusually frequent use of sick leave and tardiness for work. (Exs. 4-8) He was disciplined for the tardiness incidents. In the winter and spring of 2015, Trapp sought help to deal with his alcohol abuse, including through the City’s Employee Assistance Program. However, he did not succeed in resolving his problems at that time.
7. As of mid-2015, Fire Department leaders, including Assistant Chief Gerard Washington and health and safety officer Jason Mimms, were aware of Trapp’s alcohol problems, as were personnel at Local 215. These individuals planned an “intervention” in mid-2015 in the hope of getting Trapp to enter the Rosecrance-Florian in-patient treatment program in Rockford, Illinois, which is a nationally recognized, 30-day mental-health program designed specifically for firefighters and paramedics. On June 2, 2015, Department and Local 215 personnel met with Trapp regarding the program, offering to have him transported immediately to Rockford. Trapp declined, at least in part because of his concern regarding care of his five-year-old daughter, as to whom he had 50% custody as a single parent.
8. There is a factual dispute regarding what happened next. According to Assistant Chief Washington, there was another meeting on June 8, 2015, involving Trapp, Mimms, an unidentified representative of Local 215, and himself (Washington). At this meeting, Trapp was allegedly informed that he would get no more breaks or lenience from the Department, but would be held to a very high level of accountability for any future violations. Trapp, however, could recall no such meeting. Likewise, Captains Al Jansen and David Seager, both officials in Local 215, testified that they were not aware of a June 8 meeting and that it was unlikely such a meeting would occur without their knowledge.
9. We do not think we need to resolve the factual dispute. Counsel for the Chief evidently sought to prove the meeting happened in order to show that Trapp knew he was on “thin ice” with the Department in July 2015. However, even assuming the June 8 meeting did not occur, we have no difficulty concluding that Trapp knew his position was quite tenuous. We base this conclusion on Trapp’s lengthy suspension in 2014, the subsequent

disciplines for tardiness, and the extraordinary intervention that was attempted on June 2, 2015.

10. Trapp's alcohol issues finally came to a head on July 17, 2015, when he failed to show up for work. Worried colleagues summoned police and fire personnel to his home, but did not find him there. Later that day, Trapp called in to say that he was still drunk from the previous night. He missed his entire 24-hour work shift. This incident of absence without leave (AWOL) forms the factual basis for the present charges. (Exs. 1 and 27)
11. The July 17 incident finally led Trapp to request placement in the Rosecrance-Florian program. He successfully completed the program in August 2015, and has continued to obtain counseling and participate in AA meetings since then. Trapp testified that he has not had any alcohol since July 17. We have no reason to doubt his claimed progress and applaud his ongoing efforts to address his serious mental-health difficulties.
12. Despite these positive developments, Chief Rohlfing chose to discharge Trapp in September 2015 for the previous misconduct.

### **CONCLUSIONS OF LAW**

13. Disciplinary appeals before this Board are normally divided into two parts. In Phase I, we determine whether a violation of a Department rule has been proven by a preponderance of the evidence. In making this determination, we are guided by the first five "just cause" standards set forth in Wis. Stat. §62.50(17)(b). In Phase II, we determine whether the "good of the service" requires discharge or some lesser discipline. In making this determination, we are guided by the sixth and seventh statutory just cause standards. We also take into account the categories of evidence specified in Section 14 of our own Rule XVI (i.e., evidence regarding "character, work record, and the impact of the misconduct on the complainant, department, and community").
14. In the present matter, appellant Trap has waived Phase I and concedes that he violated Department rules by not showing up for work on July 17. Therefore, we will confine our analysis to the Phase II issues and evidence. We first consider the seventh just cause standard.
15. The seventh just cause standard is "Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department." AWOL is a serious violation, which can create substantial inconvenience for a member's coworkers and supervisors. When a firefighter does not show up for work, an apparatus may have to be taken out of service for the shift. Alternatively, the missing firefighter might be replaced by a colleague, which would entail the payment of overtime. Additionally, as in this very case, time and resources

may be put into trying to find the missing firefighter in order to determine whether he is seriously ill or injured and in need of emergency assistance.

16. That said, we question whether AWOL, standing alone and without special aggravating circumstances, can reasonably justify discharge. However, what might be a difficult question becomes substantially easier in this case in light of Trapp's problematic record of service, which included a major discipline in 2014 and the subsequent pattern of alcohol-related tardiness and days away from work leading up to the July 17 incident. As far as we can tell, Trapp's work performance was satisfactory when he was present, but he had become quite unreliable about being present. All of this makes for a seriously aggravating record of service. We conclude that there is at least a reasonable relationship in this case between the discipline imposed, the gravity of the violation, and the appellant's record of service.
17. The sixth just cause standard is "Whether the chief is applying the rule or order fairly and without discrimination against the subordinate." In this regard, we are somewhat troubled by the severity of the discipline in this case relative to the Department's written tardy/AWOL policy, as set forth in Exhibit 28. Dated April 24, 2015, the policy includes a matrix with different potential disciplines based on the member's number of other tardy/AWOL incidents in the past year. Applied as written to Trapp, the policy would call for just a three-day suspension. The policy expressly provides for the possibility of *less* severe discipline, but does not as clearly indicate that more severe discipline might be imposed.
18. Actual disciplinary practice seems roughly consistent with the policy. Exhibit 30 sets forth the discipline that has been imposed in other recent AWOL cases. It appears that suspensions of one to three days have been the norm. Moreover, we received evidence regarding the disciplinary history of two other firefighters who were said to have alcohol-related attendance problems. Neither was terminated for attendance, although one was terminated for a different reason. There seems general agreement that it has been common for the Department to impose lesser discipline than what is called for in the matrix, but extremely rare for the Department go the other direction, as it did with Trapp.
19. On the face of it, the unusual severity of the discipline imposed in this case for an AWOL violation does raise fairness concerns. We are satisfied, however, that Trapp's disciplinary history, including his lengthy suspension in 2014, differentiates him from most other Department members who have been subject to AWOL sanctions. If there remain one or two AWOL violators whose records of service are comparable to Trapp's, we do not think disparity in their treatment necessarily makes Trapp's discipline unfair. The Department is permitted to adjust its disciplinary practices over time based on experience and changing needs. Chief Rohlfing testified that he has been trying to

enhance accountability in the Department over the past year and indicated that he is now taking prior record into account more heavily in his disciplinary decisions. We see no reason why he should be precluded from making such adjustments.

20. We further note that the Department's new Code of Conduct was established on June 1, 2015, *after* the tardy/AWOL policy. (Ex. 29) The Code expressly states, "The Fire Chief reserves the right to impose discipline/corrective action up to and including discharge from the department, if after a prompt, thorough, and impartial investigation has been conducted, it is determined that a breach of the Code has occurred." (Ex. 29, p. 3) The Code further states, "Members who repeatedly make errors can expect the consequences of their behavior to become progressively more punitive." (p. 12) If the tardy/AWOL policy is read in conjunction with the Code of Conduct, we think members are reasonably on notice that the matrix will not necessarily limit the discipline to be imposed in AWOL cases, and that discharge is a potential discipline for *any* violation, especially for a member who has already had a major discipline imposed in the past, as Trapp had. (Nonetheless, in order to avoid any potential confusion in the future, we recommend that the Department add language to the tardy/AWOL policy expressly stating that the Chief reserves the right to impose more severe discipline than is called for in the matrix).
21. We conclude, for the foregoing reasons that the Department has satisfied the sixth just cause standard by a preponderance of the evidence.
22. The ultimate question we must answer is whether Trapp's discipline is required for the good of the service. We think this is a close question. We believe that Trapp has made significant progress in dealing with his substance-abuse and mental-health issues since July 17, 2015. Trapp thinks he would be an asset to the Department based on his ability to help other members who are struggling with issues similar to his, and we think he may indeed have something valuable to contribute in this regard. On the other hand, his violation was a serious one and his prior record quite troubling. The Department made an extraordinary offer of help to him on June 2, 2015, which he declined and then proceeded to further violate Department attendance rules. The Department cannot be expected to continue offering new chances indefinitely to problem employees. At some point, it is appropriate for the Department to discipline misconduct.
23. We have observed in the past that deference may appropriately be given to a chief's decision to discharge, assuming that the decision is substantively reasonable, procedurally fair, and not motivated by any improper bias or personal animus. *See Schoen v. Board of Fire and Police Commissioners*, 2015 WI App 95. After all, a department chief is much more closely involved in his or her department's day-to-day operations than we are, and is thus better able to assess the on-the-ground consequences


of a discharge decision. We think this principle carries the day in favor of the Chief in this case. We conclude that the good of the service requires Trapp's discharge.

### DECISION

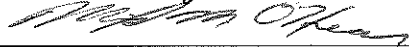
The charge against the Appellant, Ryan T. Trapp, is sustained, and he is ordered discharged from the Department.

Dated at Milwaukee, Wisconsin this 7<sup>th</sup> day of January, 2016.

BY THE COMMISSION:

  
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Fred Crouther

  
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Kathryn A. Hein

  
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Michael M. O'Hear